

BOARD OF ZONING APPEALS

MINUTES

September 25, 2007

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held at 1:30 p.m., on September 25, 2007 in the Planning Department Director's Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, and Kansas.

The following board members were in attendance:

BICKLEY FOSTER, DWIGHT GREENLEE, STEVEN ANTHIMIDES, JOSHUA BLICK  
BENJAMIN STIFF, CHARLES YOUNG, JERRY HOGGATT

Board members absent:

City of Wichita staff present:

HERB SHANER – Office of Central Inspection present.

SHARON DICKGRAFE – Law Department

The following Planning Department staff members were present:

DALE MILLER, Secretary.

YOLANDA ARBERTHA, Recording Secretary.

FOSTER        We will start the BZA hearing at 1:35PM on September 25, 2007. We have all seven members present including the 3 newly appointed members. Dale are you serving as secretary?

MILLER        Yes I am serving as secretary today.

FOSTER        Okay, will you announce the new members and who appointed them?

MILLER        We have Benjamin Stiff appointed by L. Williams; Charles Young appointed by S. Schlapp; and Jerry Hoggatt appointed by J. Longwell.

FOSTER        Have you given them some orientation?

MILLER        We spent about 18 minutes going over orientation before the meeting started.

FOSTER        We have some minutes for June 5, 2007. We will need motions by members who were in attendance at that time.

GREENLEE     I moved that the BZA June 5, 2007 minutes be approved as transcribed.

ANTHIMIDES Seconded.

MOTION CARRIED 7-0 Unanimously

FOSTER            The first case that we have today is a variance for a pole sign to increase the height from 30 to 35 feet for Friend's University. We will call on our staff person to make his report.

SLOCUM            Good afternoon, Derrick Slocum, Planning staff, I will present BZA2007-38.

**BACKGROUND:** The applicant, Friends University, is operating an educational institution in an area generally bounded by Highway 54 (Kellogg) on the south, Maple on the north, Glenn on the east and Meridian on the west. Kellogg Drive is located adjacent to Kellogg and provides for east/west circulation along the south portion of the campus. The application area is located at the northeast corner of Bonn and Kellogg Drive. The university already has a variable message LED sign, 30-feet tall at this location. The applicant desires to replace the existing LED sign and add an architectural feature to the top of the rectangular-shaped LED sign, which would make the sign 35-feet tall. The underlying zoning of the site is "U" University and the sign code restricts signs for institutional uses within this zoning category to a height not to exceed 25-feet.

The subject sign has previously been approved for a variance (BZA 20-95) to increase the height from the sign code requirement of 20-feet to 30-feet and to increase the total square footage from the sign code required 48 square feet to 184 square feet, prior to the site being rezoned to "U" University. This application is for a variance to increase the height from the approved 30-feet to 35-feet, which would allow for the addition of a 5-foot triangle-shaped pediment on top of the rectangle shaped LED reader board. Increased square footage of the sign is not required to be addressed in this variance application since the sign code eliminates the inclusion of the square footage of architectural details when considering the size of the sign for permitting purposes.

The 5-foot pediment will not contain any advertising or lighting and has been recommended by the Historic Preservation Board because they feel that this particular detail is appropriate for the historic environs, which the sign is located in. The applicant has submitted a justification statement (attached) for the requested variance to permit the sign height increase. It is the applicants intent to re-use the existing sign support structure, that eliminated the possibility of reducing the support structure by 5-feet.

**ADJACENT ZONING AND LAND USE:**

NORTH	"U"	University/College
SOUTH	"MF-29"	Single-family Residence
EAST	"U"	University/College
WEST	"U"	University/College

**UNIQUENESS:** It is the opinion of staff that this property is unique, inasmuch as the site is being used for "university" purposes, located adjacent to a cross-country highway, that has buildings placed on the historic register. Impacts to properties listed on the historic register require design review for compatibility. It is felt that the addition of the triangle shaped

pediment will make the sign more compatible with the university's aesthetic and historical status.

**ADJACENT PROPERTY:** It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as all adjacent properties are developed with university uses and the nearest residential uses are located across the Kellogg (US-54) flyover.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the sign regulations will constitute an unnecessary hardship upon the applicant, inasmuch as the addition of a 5-foot pediment to the sign will enable the sign to more effectively fit in with the character to the historic environs in which the sign will be located, the pediment will not detrimentally effect nearby properties and the pediment will not be a visual obstruction to vehicles on Kellogg. The university desires to maintain the historic character of their campus, and the current signs rectangular shape is less desirable when compared to the proposed sign height and design.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the signage is tasteful in design, is of an appropriate scale, and has minimal lighting.

**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variance requested would not oppose the general spirit and intent of the Sign Code inasmuch as a stated intent of the Sign Code is to provide an opportunity to achieve a reasonable balance between the need for a sign and preserving the visual qualities of the community. In this instance, the need for a five-foot increase in sign height to provide a pediment will finish the top of the sign and provide a reasonable balance with the visual qualities of the community.

**RECOMMENDATION:** It is staff's opinion that the additional 5-foot pediment requested for an approved sign is appropriate for the intended purpose additional architectural detail within historic environs. Should the Board determine that the five conditions necessary for the granting of the variances exist, and then it is the recommendation of the Secretary that the variance be GRANTED, subject to the following conditions?

1. The pole sign on the subject property shall comply with all regulations of the Sign Code and the conditions set forth in BZA20-95, except that the sign shall be permitted to be a maximum of 35 feet in height.
2. The pole sign on the subject property shall be of a design that is in substantial conformance with the approved elevation rendering.
3. The applicant shall obtain all permits necessary to construct the signage, and the signage shall be erected within one year of the granting of the variance, unless the Board extends such time period.
4. The above conditions are subject to enforcement by any legal means available to the City of Wichita.

Are there any questions? The applicant and the agent are here to answer any questions for you also.

FOSTER Mr. Slocum I am looking at the pictures submitted by the George Lay Signs. I am looking at the top of it. This triangle on top is what you call the pediment?

SLOCUM Yes.

FOSTER That is not part of the square footage of the sign itself right?

SLOCUM Correct.

FOSTER So, they are coming to us for the height of the sign not because of the size of the sign, right?

SLOCUM Yes.

HOGGATT Does this sign have unlimited illuminations or is there standards as far as the sign illumination? If those standards change in the future, will that be taken into consideration?

SLOCUM Yes, we do have standards for the amount of lighting and the speed of message going across the LED. I cannot tell you exactly what those are but we do have them. But yes, the sign will have to abide by those standards that are in place.

HOGGATT I believe they are in the process in changing the illumination on the signs.

DICKGRAFE Yes, they are in the process of approving new standards for the LED illuminating signs. Those have not been adopted yet. But certainly the granting of this variance is not going to change any of those regulations regarding what this sign can and cannot do. Yes, they are in the process of changing them. I do not think they have been passed yet. Right Dale?

MILLER Not that I know of unless Herb has heard of something?

HOGGATT My question is when they are passed will the applicant understand that they will have to comply with the lower or that new amount of illumination?

MILLER Perhaps it will be better to let the applicant respond to what they are willing to do if they think they can.

FOSTER We will call on the applicant.

DIRKSON Good afternoon, my name is Randy Dirkson, I am the Vice President for Administration and Finance. Our President sends his wishes to you as he had

hip replacement and is unable to be hear today. I am joined with Herby Wright who is Vice President for University Relations sitting on the end there. We want to support what staff is recommending. We are simply asking for an architectural pediment on top of the sign that we are already approved to do. In looking at the sign, we are trying to make sure that it ties in with the historic nature of Davis Hall. That is very important to us. You asked about the lighting. We want the sign to dim at night as the City is considering for its regulation because we do not want the sign to be an unattractive barrier in our community. We really feel this is a very good move for us. The existing sign is 12 years old, it is not very energy efficient, and it is not very functional anymore. We put about 55 millions dollars of renovation into our campus within the last 15 years. Having an attractive sign is important to us because that is our front door along Kellogg. We feel like the pediment would enhance the overall appearance for our campus. So, I am will to take any questions that you have but I want to encourage approval. Any questions?

YOUNG Is there any opposition?

DIRKSON I talked with three of the nearby homeowners. We bought the house closes to the sign a week ago Friday. Ed and Carol Riffel that live close expressed no problem with the change to me. Phil Whitman who is one of our board of trustees has no objections. So, we have had no opposition from the neighborhood.

FOSTER Have you read the proposed conditions? Are you in agreement with the conditions?

DIRKSON Yes I am.

FOSTER Let's work on one of the conditions. On number four, the members would note that this is a carry over from our previous cases. And at our last hearing, we think we got it right. Instead of it referring to the Board of Zoning Appeals would make the finding of it being in violation. Here is what we came up with last hearing. The above conditions are subject to enforcement by any legal means available to the City of Wichita. That covers all the bases. Do you agree that we got this right now, Sharon?

DICKGRAFE Yes.

FOSTER So any motions or any thoughts here? Mr. Dirkson, were you at this last meeting?

DIRKSON No, I was not present but one of my colleagues was.

FOSTER Is there anyone else here to speak to this case? I will confine the discussion to the board here. In the back of the book, there are selected suggested motions and it is very important to do these motions because it helps the secretary to get it properly done. There are two motions in the back and the first motion is to approve the variance that literally approve the secretaries report through the amended made on number five to the enforcement. The second motion is to deny the variance and if you do that you do need to indicate the changes in the Secretary's report that would lead you to believe that it should be denied. Are there any questions?

GREENLEE I move that we make a motion.

ANTHIMIDES I will move that the board accept the findings of facts as set forth in the secretary's report and that all five conditions set out in section 2.12.590 B to be of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions.

FOSTER And that is with the amended conditions?

ANTHIMIDES Yes.

GREENLEE Seconded.

FOSTER All in favor say Aye.

**Motion carries 7-0**

FOSTER We are ready for the next case a variance case for Linda and John Bolster. This is for a reduction of a street side-yard from 20 feet to 3 feet. Bill, are you presenting this case?

Bill Longnecker, Senior Planner of Current Plans, I am presenting case BZA 2007-00040 this is a case to reduce the side yard setback from 20 feet to 3 feet. One thing that the applicant gave to me that did not go out in the mail out was a mortgage survey of the property when he bought it that shows a garage with a driveway that goes out to Hiram. The applicant basically wants to replace that garage with a proposed garage in the same area. (Passes out handout to BZA Members)

**BACKGROUND:** The applicant proposes to place a 40-foot (x) 50-foot detached garage on the "MF-29" Multi-family zoned subject corner lot; the south half of Lot 7, Hiram Avenue, Lawn Field Addition. Per the Unified Zoning Code (UZC), the "MF-29" zoning district requires a 20-foot street side yard setback along the subject corner lot's Munnell Avenue frontage; See UZC, Art.II, Sec.II-B-7g, corner lot, and Art.III, Sec.III-E.6, setbacks on corner lots. The applicant has requested a variance to reduce the current UZC's 20-foot street side

yard setback to 3-feet in order to place the proposed garage. A variance is required to reduce building setbacks by more than 20 percent.

An existing drive runs from Hiram Avenue (the front yard) between a portion of the subject site's single-family residence and Munnell Avenue. The applicants have stated that the drive had connected to a detached garage, which was demolished when an addition was added to the rear of the house; no date is given for demolishing of the garage. Based on the dimensions provided by the applicants, staff has calculated that there could be approximately the south 4.7-feet of drive the drive extended beyond the house into the applicants' backyard. This is not wide enough to allow an automobile or light truck pass the residence. It would appear that the applicant would have to pour additional width on to the existing drive to allow enough room for a car or a light truck to get back to the proposed garage, which is permitted by the UZC; Art III, Sec III-E-2e-(1c).

The applicant's corner site, the abutting and adjacent properties (originally 93 lots), are all in the Lawnfield Addition, which was recorded with the Register Deeds October 15, 1886. Many of the original lots that were 100-ft [x] 191.25-ft have been subdivided by selling off half or more of these lots for single-family residences. GIS shows the applicants' residence to have constructed in 1925, while a search of the building dates of 23 single-family residences abutting and adjacent to the applicants' residence, reveal building dates from 1910-1950, with most (15) being built between 1919-1926. A visual and aerial survey of the area shows a repeated pattern of encroachment into the Munnell Avenue street side yard setback by either single-family residences or accessory structures, most commonly garages. The

Prior to 1996, street side yard setbacks, if not platted, for single-family residential zoning were not less than 6-feet or if the lot was recorded before October 1, 1928, not less than 3-feet.

**ADJACENT ZONING AND LAND USE:**

NORTH	"MF-29"	Single-family residences
SOUTH	"MF-29"	Single-family residences
EAST	"MF-29"	Single-family residences, church
WEST	"MF-29"	Single-family residences

**UNIQUENESS:** It is the opinion of staff that this property is unique inasmuch as the property was platted in its current configuration in 1910 (Lot 18, B.D. Allen's Addition) and the residence on the lot was constructed in the 1920s, with the existing garage appearing to be constructed closer to the 1920s than today; however, the zoning regulations that established the 15-foot side yard setback requirements were not established until 1996, long after the property had already been developed.

**ADJACENT PROPERTY:** It is the opinion of staff that the granting of the variance requested would not adversely affect the rights of adjacent property owners, inasmuch as many adjacent properties are developed with similar encroachments into the currently required setbacks. The development of the neighborhood still largely reflects the setback requirements that were in

effect prior to 1996, when the adoption of the revised zoning code made some of the residential structures and their accessory structures legally nonconforming encroachments.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the zoning regulations constitutes an unnecessary hardship upon the applicant, inasmuch as requiring the applicant to comply with the street side yard setback requirements will prevent the applicant from upgrading his property with no corresponding public benefit.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the public has an interest in supporting the logical development of residential properties, including permitting upgrades and redevelopment of existing properties through the approval of variances in areas where non-conformities with the current zoning regulations are common.

**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the primary intent of the street side yard setback requirements is to maintain sufficient separation between structures and residential street right-of-way for public safety reasons, and the requested variance does not negatively impact this intent. Waterman Street is a short residential street that dead-ends at College Hill Park. It basically serves the immediate area's residences, thus the vehicular traffic generated is primarily limited to those living in the immediate area, thus the impact of the placement of the garage as proposed, will have a minimum impact on safe vehicular and pedestrian traffic along this portion of Waterman Street.

**RECOMMENDATION:** Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance to reduce the street side setback from 15-feet to 6-feet be GRANTED, subject to the following conditions:

1. The site shall be developed in substantial conformance with the approved site plan and elevation drawings.
2. The setback reduction shall apply only to the "22-foot (x) 32-foot detached garage" as illustrated on the approved site plan. All other structures or additions on the subject property shall conform to the setbacks permitted by the Unified Zoning Code unless a separate Zoning Adjustment or Variance is granted.
3. The applicant shall obtain all permits necessary to construct the improvements, and the improvements shall be constructed within one year of the granting of the variance.
4. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

With that I stand for questions.

FOSTER            With the 80 feet right-of-way on Munnell, how far back from the curb would this structure be toward Munnell? Did you figure that?



LONGNECKER It would be behind the fence. In your packets, look at the exhibit that has been provided by the applicant. The applicant is showing that there is 25 foot from the back curb to the property line. So, if the setback were 3 feet from the property line, you would be looking at 28 feet from the back curb to the property line.

FOSTER How far out is the structure to the east?

LONGNECKER I think we scale that off to be 3 feet behind the fence. We are talking about 28ft from the curb line. I scaled that off of GIS.

FOSTER So the relationship to the garage would be what?

LONGNECKER Pretty much in-line.

FOSTER Does members have any questions for Bill?

BLICK They are going to enter on Hiram?

LONGNECKER Correct

BLICK Are they going to build another driveway? Or are they going to use the existing and go around the house?

LONGNECKER They intend to widen the current driveway. Through the unified zoning code you can have a drive out to the property line. So, they will be widening it out to get a vehicle a straight shot into the garage.

BLICK Okay.

GREENLEE What would be the problem with giving accessed from Munnell? Would that create a problem?

LONGNECKER They are proposing to use the existing drive on to Hiram to get a straight drive in. If they are going to have access on to Munnell, and if they are going to put a trailer it would be easier to keep that trailer out of the street right-of-way and off Hiram and bring it straight back to the garage off of Hiram. Rather than maneuver it off of Munnell.

GREENLEE I agree. Thank you very much.

FOSTER Thank you Bill. We will hear from the applicant

BOLSTER My name is John Bolster and I live at 756 S. Hiram.

FOSTER Have you ever been here before?

BOLSTER No.

FOSTER Good. Is there anything you like to add?

BOLSTER Bill said it all basically. The building will be inside the fence. The Setback from the center of the street to my property line is 40 feet on my side of the street. On the other side of the street is not quite that much.

FOSTER Okay. Is there anything else?

BOLSTER No.

FOSTER Do you agree with the conditions that Bill has outline for you including the amended one with enforcement and so forth.

BOLSTER Yes.

FOSTER This is a very big garage what will you have a double door?

BOLSTER We only propose to have one door, a roll up door. We have racecars and we can back the trailers in with the cars.

FOSTER This is very big almost as big as your house. That is the reason I mentioned it. Are there any questions from the members?

YOUNG How close will it be to the neighbor's property line to the east of you?

BOLSTER It has to stay 10 feet from the neighbor's property line.

FOSTER Did you notify all the surrounding property owners of this change.

MILLER Yes.

BLICK Where are there any protest against this?

LONGNECKER I did not receive any calls inquiring or protesting it.

FOSTER Any other questions or comments?

STIFF Will this interfere with the sewer clean out area?

BOLSTER No, it should not.

STIFF            How close is it to the clean out area?

BOLSTER        The sewer manhole is in the neighbors' yards to the east and the north of me.

FOSTER          Well thank you Mr. Bolster. Bill do Wichita have any standards about the maximum size of a garage?

LONGNECKER    It is an accessory structure. It does not give any maximum size to an accessory structure. An accessory structure can be larger than the primary residence.

FOSTER          Is there any one else who would like to address this case? I will confine the discussion to the board.

FOSTER          What say you?

GREENLEE        I will move that the board accept the findings of facts as set forth in the secretary's report and that all five conditions set out in section 2.12.590 B to be of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions with the amended conditions.

STIFF            Seconded.

FOSTER          All in favor say aye?

**MOTION Carried 7-0 unanimously.**

FOSTER          Do we have any reports from Central Inspections?

SHANER          I have a few BZA that's been completed. Signs BZA2006-64 was a variance to increase the sign area from 48 square to 100 to 148 square feet increase the height of one sign from 20 –30 feet at KU medical school in "B" zoning at 9<sup>th</sup> and Minnesota has been taken care of; BZA2006-63 a variance to the sign code to permit a second sign in, "GO" general office zoning, located north of Maple west of 135<sup>th</sup> that's been finished; BZA2005-33 at 2556 N Maize Ct. that sign has been removed. Variance 2006-65 to reduce parking spaces from 18 to 9 and reduce the front setback required from the 3 feet for a neighborhood pool generally located Mainsgate and 127<sup>th</sup> street is completed. It looks really nice. Resolution 2006-54 a variance to reduce the side set back to 2 feet at 141 S. Crestway is done. That is all.

FOSTER          What is the time frame before they can come back and ask?

SHANER          180 days, then they can re-apply for another 180 days.

FOSTER        They have to pull the permit before 180 days or they have to come back and request another 180 days. Why don't we have some problems Herb? Dale do we have anything for next month?

MILLER        Not sure.

ARBERTHA     Two cases for next month.

FOSTER        What is the next hearing date?

ARBERTHA     October 23, 2007

FOSTER        Do we have a motion for adjournment?

BLICK         I move to adjourn.

FOSTER        Is there a seconded. Okay we have 3 seconded

YOUNG         Seconded.

**Motion carries 7-0 Unanimously**

ADJOURNMENT 2:22PM